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Attorney for Defendant,
THOMAS MOFFITT

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

KAREL SPIKES, Plaintiff, v. IMPORT AUTO BODY; THOMAS MOFFIT and DOES 1 THROUGH 10, INCLUSIVE, Defendants.	CASE NO.07CV2393 IEG WMc **DEFENDANT THOMAS MOFFITT'S ANSWER TO PLAINTIFF KAREL SPIKES COMPLAINT** Judge: Hon. Irma E. Gonzalez Trial Date: None Set

COMES NOW defendant THOMAS MOFFITT and answers plaintiff's Complaint as follows:

In response to the introduction paragraph, this answering defendant has insufficient information or belief to either admit or deny the allegations contained in the introductory paragraph of the Complaint and, on that basis, denies each and every allegation contained in the introductory paragraph of the Complaint.

This answering defendant has insufficient information or belief to either admit or deny and therefore denies the following numbered paragraphs: 1, 2, 3, 4, 5, 6, 7,8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, and 33.

This answering defendant denies the plaintiff is entitled to demand for judgment or relief.

FIRST AFFIRMATIVE DEFENSE

These answering defendants are informed and believe, and thereon allege plaintiffs' Complaint and each and every cause of action alleged therein fails to state facts sufficient to constitute a cause of action against this answering defendant.

SECOND AFFIRMATIVE DEFENSE

These answering defendants allege all times mentioned in plaintiffs' Complaint, plaintiffs failed to exercise ordinary care, caution or prudence to avoid the injuries alleged, if any, and that the resulting damage to plaintiffs, if any, were proximately caused by their own conduct.

THIRD AFFIRMATIVE DEFENSE

These answering defendants allege, and at all times mentioned as to each purported cause of action contained in plaintiffs' Complaint, plaintiffs failed to take any reasonable steps to mitigate, alter or otherwise reduce their alleged damages, if any.

FOURTH AFFIRMATIVE DEFENSE

These answering defendants are informed and believe, and thereon allege plaintiffs unreasonably delayed in filing their Complaint and notifying these answering defendants, and the basis for the purported cause of action alleged against them, and said delay is unduly and severely prejudicial to these answering defendants in their defense of the action, thereby barring or diminishing plaintiffs' recovery under the doctrine of estoppel.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs' Complaint, and each cause of action alleged therein, is barred by the applicable statute of limitations.

SIXTH AFFIRMATIVE DEFENSE

This court lacks subject matter jurisdiction over this action and this answering defendant.

SEVENTH AFFIRMATIVE DEFENSE

Any recovery by plaintiffs herein is barred by the doctrine of unclean hands.

EIGHTH AFFIRMATIVE DEFENSE

Any recovery by plaintiffs herein is barred by the doctrine of laches.

NINTH AFFIRMATIVE DEFENSE

These answering defendants reserve their right to amend this Answer and allege additional affirmative defenses if such defense has come to light during discovery in this case.

TENTH AFFIRMATIVE DEFENSE

These answering defendants are informed and believe, and thereon allege that as to each cause of action, plaintiffs' Complaint and plaintiffs' alleged damages, if any, were wholly or partly contributed to and proximately caused by third parties over which this answering defendant has no control.

ELEVENTH AFFIRMATIVE DEFENSE

These answering defendants are informed and believe, and thereon allege that all or part of the plaintiffs' allegations do not support a claim under the Americans With Disabilities Act.

TWELFTH AFFIRMATIVE DEFENSE

These answering defendants are informed and believe, and thereon allege that plaintiffs have expressly or impliedly waived their right, if any, to recover any relief whatsoever from this answering defendant.

THIRTEENTH AFFIRMATIVE DEFENSE

These answering defendants are informed and believe, and thereon allege that at all times relevant hereto, these answering defendants acted within a reasonable belief that its actions were in accordance with the federal and state laws. At no time relevant hereto did these answering defendants act in contravention in clearly established federal, state, statutory or Constitutional rights of plaintiffs of which a reasonable person should have known. Therefore, these answering defendants are qualifiedly immune from liability and damages.

FOURTEENTH AFFIRMATIVE DEFENSE

These answering defendants are informed and believe and thereon allege that at all times relevant hereto, plaintiffs' Complaint is replete with allegations which are vague, argumentative, conclusory in nature and requiring no responsive pleadings under the Federal Rules of Civil Procedure. Therefore, all such allegations are denied and such proof is demanded at trial of this case.

FIFTEENTH AFFIRMATIVE DEFENSE

These answering defendants are informed and believe and thereon allege that at all times relevant hereto, plaintiffs' Complaint is replete with allegations which deal with conclusions of law which require no responsive pleading under the Federal Rules of Civil Procedure, and therefore, deny all such allegations and such proof thereof is demanded at trial of this case.

SIXTEENTH AFFIRMATIVE DEFENSE

These answering defendants are informed and believe and thereon allege that at all times relevant hereto, plaintiffs have failed to exhaust their administrative and state remedies prior to bringing this action.

SEVENTEENTH AFFIRMATIVE DEFENSE

These answering defendants are informed and believe and thereon allege that at all times relevant hereto, that they provisionally asserts every defense available to it under the Americans With Disabilities Act and under the existing Civil Rights Act.

EIGHTEENTH AFFIRMATIVE DEFENSE

These answering defendants are informed and believe and thereon allege that at all times relevant hereto, plaintiffs failed to provide notice to these answering defendants of any of the alleged violations of law contained in the Complaint prior to filing this action.

NINETEENTH AFFIRMATIVE DEFENSE

These answering defendants are informed and believe and thereon allege that at all times relevant hereto, alterations to access, to the extent they are required, are not readily achievable.

TWENTIETH AFFIRMATIVE DEFENSE

These answering defendants are informed and believe and thereon allege that at all times relevant hereto, defendants acted with bonafide, legitimate justification, in that no alternative course of action could be adopted that would enable the interests of the Act to be served with less discriminatory impact.

TWENTY-FIRST AFFIRMATIVE DEFENSE

These answering defendants are informed and believe and thereon allege that at all times relevant hereto, no less discriminatory alternatives were available to these answering defendants.

TWENTY-SECOND AFFIRMATIVE DEFENSE

These answering defendants are informed and believe and thereon allege that at all times relevant hereto, these answering defendants were required to act out of business necessity, in that there was no acceptable alternative to accomplish the same business goal with less discriminatory impact.

TWENTY-THIRD AFFIRMATIVE DEFENSE

These answering defendants are informed and believe and thereon allege that at all times relevant hereto, defendants had non-discriminatory reasons for the actions alleged.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

These answering defendants are informed and believe and thereon allege that at all times relevant hereto, there was no reasonable accommodation available that would not cause undue hardship to this answering defendant.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

These answering defendants are informed and believe and thereon allege that at all times relevant hereto, plaintiffs' claims are barred by the doctrine of accord and satisfaction.

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WHEREFORE, these answering defendants pray for judgment as follows:

1. That plaintiff takes nothing by this action;

2. That this answering defendant be awarded his attorneys' fees and costs of suit incurred herein;

3. For a declaration of rights in favor of this answering defendant; and

4. For such other and further relief as the court may deem just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rules of Civil Procedure, Rule 38, demand is hereby made for a jury trial.

Dated: February 19, 2008

LAW OFFICES OF MARK L. MILLER

Larissa L. Lazarus,
Attorney for Defendant Thomas Moffitt

PROOF OF SERVICE

Spikes v. Import Auto Body
Case No: 07CV2393 IEG WMC

I, the undersigned, am a citizen of the United States, over the age of 18 years, and not a party to or interested in the within action. I am an employee of the LAW OFFICES OF MARK L. MILLER and my business address is 2341 JEFFERSON STREET, STE. 100, San Diego, CA 92110.

On February 19, 2008, I served the attached:

Defendant Thomas Moffitt's Answer to Plaintiff's Complaint

on all interested parties in said cause, by delivering a true copy as follows:

[X] **(By First Class Mail)** I placed the original or a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid. I deposited said envelope in the United States Mail in the City and County of San Diego, California.

I am readily familiar with our law firm's practice for collection and processing of correspondence for mailing with the United States Postal Service, that his mailing will be deposited with the United States Postal Service on this date in the ordinary course of business and that I sealed and placed each envelope for collection and mailing on this date following ordinary business practices.

[ ] **(By Personal Service)** I personally served the original or a true copy thereof enclosed in a sealed envelope to the office(s) of the addressee(s).

[ ] **(By Facsimile)** I sent a true copy thereof via telephone facsimile transmission to the following FAX numbers and a hard copy to follow by mail.

Each Envelope was Addressed as Follows:

Amy B. Vandeveld, Esq.
Law Offices of Amy V. Vandeveld
1850 Fifth Avenue
San Diego, CA 92101

Executed on February 19, 2008, at San Diego, California, I declare under penalty of perjury under the laws of the State of California that the above is true and correct and this document was printed on recycled paper.

Larissa L. Lazarus